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DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-011]

Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Notice of Court Decision Not in Harmony with Amended Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 8, 2017, the United States Court of International Trade (CIT) entered final judgment sustaining the Department of Commerce's (the Department's) final results of remand redetermination pertaining to the countervailing duty (CVD) investigation of certain crystalline silicon photovoltaic products (solar products) from the People's Republic of China (PRC). The Department is notifying the public that the CIT's final judgment in this case is not in harmony with the Department's final determination, as amended, in the CVD investigation of solar products from the PRC.

DATES: Applicable September 18, 2017.

FOR FURTHER INFORMATION CONTACT: Gene H. Calvert, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482-3586.

SUPPLEMENTARY INFORMATION:

Background

On December 23, 2014, the Department published its final determination in the CVD investigation of solar products from the PRC.¹ On February 18, 2015, the Department published an amended final determination and CVD order.² In the *Final Determination*, the Department found that certain unreported assistance discovered during the investigation was countervailable using adverse facts available (AFA) pursuant to section 776 of the Tariff Act of 1930, as amended (the Act).³ Additionally, the Department determined not to initiate investigations into the mandatory respondents' creditworthiness in certain years, finding that SolarWorld Americas, Inc.'s (SolarWorld) creditworthiness allegation failed to satisfy the threshold initiation requirements of 19 CFR 351.505(a)(6)(i).⁴ In the *Amended Final Determination*, the Department found that it made a ministerial error in countervailing one of the unreported programs, and removed that program from the net countervailable subsidy rate calculated for Changzhou Trina Solar Energy Co., Ltd. (Trina Solar).⁵

Trina Solar and SolarWorld appealed the *Amended Final Determination* to the CIT, and on December 30, 2016, the CIT sustained, in part, and remanded, in part, the *Amended Final Determination*.⁶ First, the CIT remanded the *Amended Final Determination* for the Department to make the necessary factual findings to support its determinations, based upon AFA, to countervail

¹ See *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Final Determination*).

² See *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 8592 (February 18, 2015) (*Amended Final Determination*).

³ See *Final Determination*, and accompanying Issues and Decision Memorandum at Comment 15.

⁴ *Id.* at Comment 17.

⁵ See *Amended Final Determination*, 80 FR at 8593.

⁶ See *Changzhou Trina Solar Energy Co., Ltd. et al. v United States*, Consol. Court No. 15-00068; Slip Op. 16-121 (CIT December 30, 2016) (*Remand Opinion and Order*).

the unreported government subsidies discovered during the investigation.⁷ The CIT further held that should the Department continue to find those government subsidies countervailable on remand, the Department must then explain how it selected the AFA rates for those subsidies.⁸ Second, the CIT granted the Department's request for a voluntary remand to reconsider its determination not to initiate creditworthiness investigations for Trina Solar and the other mandatory company respondent, Wuxi Suntech Power Co., Ltd. (Suntech).

In accordance with the CIT's remand order, the Department reconsidered these issues and submitted its Final Remand Results with the CIT on April 28, 2017.⁹ In the Final Remand Results, the Department continued to countervail all but one of the unreported programs using AFA. The Department also revised its determination regarding whether to initiate creditworthiness investigations for Trina Solar and Suntech, in part, and ultimately found Trina Solar and Suntech to be uncreditworthy in certain years. As a result of these changes, on remand, the Department determined revised countervailable subsidy rates of 39.50 percent for Trina Solar, 27.65 percent for Suntech, and 33.58 percent for all other producers/exporters of solar products from the PRC.¹⁰ On September 8, 2017, the CIT sustained the Department's Final Remand Results in full.¹¹

Timken Notice

In its decision in *Timken*,¹² as clarified in *Diamond Sawblades*,¹³ the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's September 8, 2017,

⁷ *Id.* at 24-25.

⁸ *Id.* at 26-28.

⁹ See Final Results of Redetermination Pursuant to Court Remand, *Changzhou Trina Solar Energy Co., Ltd. et al. v United States*, Consol. Court No. 15-00068; Slip Op. 161-121 (April 28, 2017) (Final Remand Results).

¹⁰ See Final Remand Results at 48.

¹¹ See *Changzhou Trina Solar Energy Co., Ltd. et al., v. United States*, Consol. Court No. 15-00068; Slip Op. 17-122 (CIT September 8, 2017).

¹² See *Timken Co. v United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

¹³ See *Diamond Sawblades Mfrs. Coalition v United States*, 626 F.3d 1374 (Fed. Cir. 2010) *Diamond Sawblades*.

judgment sustaining the Final Remand Results constitutes a final decision of the CIT that is not in harmony with the Department's *Amended Final Determination*. This notice is published in fulfillment of the publication requirement of *Timken*.

Amended Final Determination

As there is now a final court decision with respect to the *Amended Final Determination*, the Department amends its *Amended Final Determination*. The Department finds that the revised net countervailable subsidy rates exist:

Company	Subsidy Rate (<i>ad valorem</i>)
Changzhou Trina Solar Energy Co., Ltd.	33.50 percent
Wuxi Suntech Power Co., Ltd.	27.65 percent
All Others	33.58 percent

Cash Deposit Requirements

Because there has been a subsequent administrative review for Trina Solar, the cash deposit rate for Trina Solar will remain the rate established in the final results of the administrative review of solar products from the PRC covering the period June 10, 2014, through December 31, 2015, which is 13.93 percent.¹⁴ As there have been no subsequent administrative reviews for Suntech, the Department will instruct U.S. Customs and Border Protection (CBP) to set the cash deposit rate for Suntech as listed above.

Finally, the Department will instruct CBP that the all-others cash deposit rate is to be amended to reflect the simple average of the revised subsidy rates calculated for Trina Solar and for Suntech, as listed above.

This notice is issued and published in accordance with sections 516(e), 705(c)(1)(B), and 777(i)(1) of the Act.

¹⁴ See *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014-2015*, 82 FR 42792 (September 12, 2017).

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performing the non-exclusive functions and duties of the
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Dated: November 6, 2017.

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